LANDLORD AND TENANT—SURRENDER BY OPERATION OF LAW.—Plaintiff leased a room in a hotel to A for a billiard room with agreement that plaintiff would cut an arch-way from the hotel bar to the billiard room. A assigned to T, who moved out because plaintiff walled up the arch-way. Plaintiff later rented the room to others. In an action by plaintiff against A to recover rent due, *held* that there had been a surrender by operation of law. *Hotel Marion Co.* v. *Waters* (Ore. 1915) 150 Pac. 865.

This decision concerns a point about which the various courts in the country are in conflict. The decided weight of authority is with the view that the landlord may, when his tenant has abandoned the premises, lease the premises to others and still hold the original tenant. *Oldewurtel* v. *Wiesenfeld,* 97 Md. 165, 54 Atl. 969; *Marshall* v. *Grosse Clothing Co.,* 184 Ill. 421; *Humiston, Keeling Co.* v. *Wheeler,* 175 Ill. 514; *Miller* v. *Benton,* 55 Conn. 529, 13 Atl. 678; *Respina* v. *Porta,* 89 Calif. 464, 26 Pac. 967; *Wolffe* v. *Wolff Bro.,* 69 Ala. 549; *Meyer* v. *Smith,* 33 Ark. 627; *Auer* v. *Penn.,* 99 Pa. St. 370; *Marseilles* v. *Kerr,* 6 Wharton 500. Several courts, however, have announced the doctrine that the landlord may lease his premises to others and hold the original tenant only when he has notified the tenant in advance that he intends to take such action and that his purpose in so doing is to reduce but not to extinguish the tenant's liability. *Alsup* v. *R. M. Banks et al.,* 68 Miss. 664, 13 L. R. A. 598; *Stein* v. *Hyman-Lewis Co.,* 95 Miss. 293; *Brown* v. *Cairns et al.,* 107 Iowa 727, 77 N. W. 478. In the case of *Rucker* v. *Tabor,* 127 Ga. 101, the court, although not expressly deciding the point, announces the above doctrine in its dictum. The New York courts alone have held to the doctrine that a "reletting" of premises to other parties will, unless prevented by agreement in writing, cause a surrender of the lease by operation of law. *Gray* v. *Kaufmann Dairy and Ice Cream Co.,* 162 N. Y. 388. The New York rule, although decidedly in the minority, seems to be supported by the better reason. Unless the first lease has somehow been put out of the way, how can the landlord be in a position to make effective lease of the same premises *in praesenti.* See II TIFFANY, LANDLORD & TENANT 1338-1341.

MASTER AND SERVANT—LIABILITY OF OWNER OF AUTOMOBILE FOR INJURIES CAUSED BY NEGLIGENCE OF THE CHAUFFEUR.—Plaintiff was injured through the negligence of a chauffeur driving a car owned by defendant; the chauffeur was at the time using the car to make a call upon a friend, contrary to directions he had received from the defendant; and had been expressly forbidden to use the automobile for his personal affairs. *Held,* that defendant was not liable. *Provo* v. *Conrad* (Minn. 1915), 153 N. W. 753.

The rule adopted by the Minnesota court is in harmony with that of nearly all the states where the question has arisen. The primary inquiry centers around the question of whether, at the time complained of, the chauffeur was pursuing the master's work. *2 Ruling Case Law* 1198. When the chauffeur is under the owner's orders, and is acting in substantial compliance with them, the owner is liable for injuries caused by the chauffeur's negligence. *Ritchie* v. *Waller,* 63 Conn. 155, 28 Atl. 29. Efforts have been made in some states to

extend the rules of liability of the owner, by statute, on the theory that the automobile is a dangerous instrumentality requiring, for the protection of the public, a high degree of care in safeguarding its use. Such efforts, however, have met with little or no success. A notable case is that of Michigan, where a statute was passed making the owner of an automobile liable absolutely for any injury caused by the negligence of the chauffeur, unless the car had been stolen. Act No. 318 (PUB. ACTS 1909), § 10. But the Supreme Court in the case of *Daugherty* v. *Thomas,* 174 Mich., 371, declared the statute void, as depriving the owner of his property without due process of law.

NEGLIGENCE—IMPUTED NEGLIGENCE OF DRIVER OF VEHICLE.—Plaintiff, an elderly man, was a voluntary passenger in a private vehicle, driven by X, which was proceeding along a highway of defendant township. The horse became frightened at some stakes left alongside the road by defendant, the road at the time being under repair, and plaintiff was thrown from the rig and seriously injured. The proof showed that the driver X was contributorily negligent and the court *held* this negligence was imputed to the plaintiff and was a bar to any recovery by him. *Lake* v. *Springville Tp.* (Mich. 1915) 153 N. W. 690

The earliest expression of judicial opinion in England on this subject is that "The passenger is so far identified with the carriage in which he is traveling that want of care on the part of the driver will be a defense for a third party whose negligence also contributed to the accident." *Thorogood* v. *Bryan,* 8 C. B. 115. This doctrine prevailed in England for a number of years, but was finally overruled in *The Bernina,* L. R. 12 P. D. 58, which now represents the English law. The doctrine of *Thorogood* v. *Bryan,* supra, has been rejected generally in this country. A leading case holds, "those on a hack do not become responsible for the negligence of the driver if they exercise no control over him further than to indicate the route they wish to travel or the places they wish to go to." *Little* v. *Hackett,* 116 U. S. 366; accord, *Carlisle* v. *Brisbane,* 4 Cent. Rep. 508, 113 Pa. 544; *Follman* v. *Mankato,* 35 Minn. 522; *Noyes* v. *Boscawen,* 64 N. H. 361; *Payne* v. *Chicago R. I. & P. R. Co.,* 39 Ia. 523; *Dean* v. *Penn Ry. Co.,* 129 Pa. 514, 6 L. R. A. 143. The Court in *Union Dac. Ry. Co.* v. *Lapsley,* 51 Fed. 174, 16 L. R. A. 800, advance a unique argument in the following statement:—"It is absurd to think that an invited guest riding in a private carriage could be held liable for the injuries inflicted on a third person by careless driving of the owner of the carriage and team, and the absurdity of this conclusion argues with almost compelling force that the negligence of such a driver cannot be imputed to the guest so as to bar his recovery when the third party inflicts, instead of receives, the injury." Wisconsin was the first to follow the doctrine of *Thorogood* v. *Bryan,* supra, in the United States. *Prideaux* v. *The City of Mineral Point,* 43 Wis. 513; *Otis* v. *Town of Janesville,* 47 Wis. 422, 2 N. W. 783. Other decisions in accord with principal case are: *Whitaker* v. *City of Helena,* 14 Mont. 124; *Mullen* v. *Owosso,* 100 Mich. 103, 23 L. R. A. 693; *Carlisle* v. *Sheldon,* 38 Vt. 440; *Colborne* v. *Detroit United Ry.,* 177 Mich. 139, 143 N. W. 32.